

Notice of Allowability

Application No.

10/790,540

Examiner

DAVID COMSTOCK

Applicant(s)

GIFFORD ET AL.

Art Unit

3733

– The **MAILING DATE** of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment and arguments filed 26 March 2010 and interview 01 April 2010.
2. ☒ The allowed claim(s) is/are 21-28 and 30-47.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20100407.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

/David Comstock/
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733

EXAMINER'S AMENDMENT

Applicant's arguments, see, e.g., reply filed 26 March 2010, page 7, lines 21-32 are not fully persuasive, since the member, e.g., 69, of Tovey et al. appears to be capable of biasing the distal ends of the staple members in the first configuration. Accordingly, in an interview on 01 April 2010, to preclude a potential rejection, Applicant agreed to amend the claims to further recite that the member is substantially tubular, which is not shown in Tovey et al. Moreover, the prior art does not disclose or render obvious the claimed invention including a substantially tubular member configured to be disposed within the claimed ring and capable of biasing elastic staple members into an open first configuration, as claimed.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Theodore Shatynski on 01 April 2010.

The priority information has been amended as follows:

In the Specification, first paragraph, line 2, after "January 9, 2003, ", --now issued as U.S. Patent No. 7,112,211,-- has been inserted.

In the Specification, page 1, line 3, after "20, 2002, ", --now issued as U.S. Patent No. 6,699,257,-- has been inserted.

The claims have been amended as follows:

In claim 21, line 11, before "member" (first instance), --substantially tubular-- has been inserted.

In claim 21, line 11, before "member" (second instance), --substantially tubular-- has been inserted.

In claim 21, line 13, before "member", --substantially tubular-- has been inserted.

In claim 28, line 1, before "member", --substantially tubular-- has been inserted.

Claim 29 has been canceled.

In claim 30, line 1, before "member", --substantially tubular-- has been inserted.

In claim 31, line 2, before "member", --substantially tubular-- has been inserted.

In claim 32, line 1, before "member", --substantially tubular-- has been inserted.

In claim 33, line 2, before "member", --substantially tubular-- has been inserted.

In claim 33, line 3, before "member", --substantially tubular-- has been inserted.

In claim 39, line 5, before "member", --substantially tubular-- has been inserted.

In claim 39, line 6, before "member", --substantially tubular-- has been inserted.

In claim 39, line 7, before "member", --substantially tubular-- has been inserted.

In claim 39, line 8, before "member", --substantially tubular-- has been inserted.

In claim 42, line 1, before "member", --substantially tubular-- has been inserted.

In claim 43, line 2, before "member", --substantially tubular-- has been inserted.

In claim 44, line 1, before "member", --substantially tubular-- has been inserted.

In claim 45, line 2, before "member", --substantially tubular-- has been inserted.

In claim 45, line 3, before "member", --substantially tubular-- has been inserted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733